THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10916 of 2006

10.4.2007

Between:

Smt.Yerra Venkata Laxmi, W/o.Yerra Eswar Rao

… Petitioner

AND

The Deputy Commissioner, Endowments Department,
Turner Choultry, Visakhapatnam
And others

… Respondents

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ORDER:

The petitioner herein purchased agricultural dry land admeasuring Acs.7.76 in survey Nos.275/1, 2 and 3 situated at Kusalavada Village of Anandhapuram Mandal in Visakhapatnam District, from M/s.Goparaju Bopanna and D.Venkatapathi Raju, under registered sale deed dated 30.1.2006. After purchasing the said land, petitioner got necessary changes in the village revenue accounts and also approached the third respondent for grant of Pattadar Pass Book (PPB) and Title Deed (TD). While the enquiry was pending, she alleges that on 15.5.2006respondents 1 and 2 inspected the land and informed the petitioner that she would be evicted from the land as the land belongs to second respondent temple. Apprehending that she might be forcibly evicted from the land, she filed the present writ petition seeking a writ of Mandamus for declaration and direction.

The respondents 1 and 2 filed separate counter affidavits. Both the counters are on similar lines and, therefore, it is suffice to refer to one of them. The first respondent in its counter affidavit denies the petition averments that the land in survey Nos.275/1, 2 and 3 belongs to the vendors of the petitioner. It is the case of the first respondent that the land in survey Nos.275/1, 2 and 3 admeasuring Acs.7.76 belongs to the second respondent temple. The lands were put to public auction in 2003 for leasing out for a period of three years from 2003-2004 to 2005-2006. The husband of the petitioner participated and became highest bidder. Though he being lessee of the land, in collusion with D.Venkatapathi Raju and G.Bopanna, got executed registered sale deed in favour of the petitioner for sale consideration of Rs.9,31,500/-, in contravention of Section 80 of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (the Act, for

brevity). The Manager of the temple while conducting auction wrongly shown the particulars of the lands as survey No.28/3 instead of survey Nos.275/1, 2 and 3. The sale of the land in favour of the petitioner is therefore illegal and does not confer any right. The allegation that the respondents 1 and 2 visited the lands unauthorizedly and measured the land is denied. It is averred that by creating false documents, the petitioner is trying to grab the land.

Learned Counsel for the petitioner submits that the extent of land in survey No.28/3 is different from the land comprised in survey Nos.275/1, 2 and 3. When the auction was conducted by the second respondent, the husband of the petitioner became highest bidder only in respect of the land comprised in survey No.28/3 and that the second respondent has no right or title over the land comprised in survey Nos.275/1, 2 and 3. Therefore, he contends that without due process of law, petitioner cannot be evicted especially when she is claiming right under a registered sale deed.

Opposing the writ petition, learned Assistant Government Pleader for Endowments for the first respondent and learned Standing Counsel for the second respondent temple submit that the land in survey Nos.275/1, 2 and 3 belongs to the temple but the Manager leased out the same land showing as if the land is in survey No.28/3 and, therefore, the sale deed does not confer any right on the petitioner. They however do not deny the legal position that if the petitioner is in possession of the temple land by reason of the sale deed, she cannot be evicted except by following the procedure under Section 83 of the Act.

There is certainly a dispute as to whether the land in survey Nos.275/1, 2 and 3 of Kusalavada village belong to the second respondent temple or not. The petitioner claims the land by virtue of the sale deed executed by D.Venkatapathi Raju and G.Bopanna on 30.1.2006 whereas the second respondent temple claims the land as an endowment found mentioned in the endowment register. Insofar as the title of the petitioner is concerned, it is in dispute because of the plea raised by the second respondent. In such a case, the remedy of the petitioner is to approach the Deputy Commissioner of Endowments and seek appropriate decision under Section 87(1)(c) of the Act contending that the land purchased by her is not a temple property. Insofar as the remedy of the second respondent is concerned, if the petitioner is in possession of the land as alleged and which allegation is not specifically denied in the counter affidavits, the temple has to seek eviction of the petitioner under Section 83 of the Act by filing appropriate application before the deputy Commissioner. The law does not permit highhanded eviction of even an encroacher of an

endowments land. For this reason alone, this Court while ordering notice before admission observed that unless appropriate written orders are passed, the petitioner shall not be dispossessed or steps shall not be taken to disturb her possession. The said observation shall hold good till the second respondent takes necessary action in accordance with law.

The writ petition, with the above observations, is accordingly disposed of. No costs.

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(**V.V.S.RAO, J**)

April 10, 2007.
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